COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

DELAY CONDONATION APPLICATION NO.NIL OF 2004

IN

DEFECTIVE SPECIAL APPEAL NO.33 OF 2004

1. Union of India through Secretary, Ministry of Defence, Civil Secretariat, New Delhi
2. Senior Record Officer, Raksha Suraksha Core Abhileksh, Defence Security Core, Mill Road, Cannaore (Kerala)
3. Deputy Director General, General Staff Branch, Army Headquarter, West Block-III, R.K. Puram, New Delhi
4. Chief of the Army Staff, New Delhi

..... **Appellants**

Versus

Narendra Kumar Sharma
S/o Late Sri Chandramani Sharma,
R/o Village Majuli (Kalyanpur) Post Office Paharpani,
Tehsil Dhari, District Nainital

..... **Respondents**

Learned standing counsel for the Union of India
Sri A.K. Joshi, learned counsel for the respondents.

Dated: March 06, 2006

Coram: Hon. P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

1. This is an application for condonation of delay duly supported by an affidavit. The grounds

taken in the application for condonation of delay in filing the appeal are that after passing the impugned order dated 14.01.2004, the certified copy of the said order was sent to the appellant/respondent No.2 i.3. Senior Record Officer, Raksha Suraksha Core Abhilekh, Defence Security Core, Mill Road, Cannaore (Kerala). The appellant No.2 studied the judgment and order in question and thereafter he sent the matter to the higher authorities for guidance to take next step. That the perusal of the judgment and order by the higher authorities also took a substantial time as final step in this regard had to be taken by them. Thereafter, the appellants reached to the conclusion that the judgment and order dated 14.01.2004 required to be challenged by means of Special Appeal on the ground stated in the counter affidavit filed by the appellants in the writ petition. That after reaching a final conclusion to challenge the order dated 14.01.2004, the appellants wrote to the Ad hoc Legal Cell, Army Holiday Home (Nainital) to approach the Central Government Standing Counsel to challenge the order dated 14.01.2004 by means of Special Appeal. That this entire process took considerable time and the appeal could not be filed within the stipulated period. That the delay in filing the Special Appeal is not intentional or deliberate, but occasioned on account fo facts stated in the preceding paragraphs of the application and hence the delay requires to be condoned.

2. The Respondents have filed their objection to the application for condonation of delay. The main objection of the Respondent is that there is no

explanation of delay in not filing the appeal with the time prescribed under the High Court Rules. The time prescribed for filing the special appeal is 30 days from the date of judgment under challenge, but in the present case the appeal has been filed with delay of about 6 months and there is also not a single word that how many days delay is there. It has also been stated that no mention of the date is there on which the certified copy was received by Appellant No.2 and when it was sent to higher authorities. Therefore, it is prayed that the delay cannot be said to be reasonable and the application is liable to be rejected.

3. We have perused the affidavit in support of the application for condonation of delay. The learned counsel for the appellant has not given any specific reasons for condoning the delay. We do not find the explanation given in the application for condonation of delay to be satisfactory. The appeal suffers from delay of more than six months. It is needless to say that each day delay in an appeal has to be explained, which has not been done in the present case.

4. Therefore, we are not inclined to condone the delay. The application for condonation of delay is rejected.

5. Consequently, the special appeal is also dismissed accordingly.

(B.C. Kandpal, J.) **(P.C. Verma,J.)**

Rajeev Dang